THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25062 OF 2006

DATED: 4TH DECEMBER, 2006.

Between :

1. K.S. Rustumfram and 2 others. .. Petitioners

And

1. The Prohibition and Excise Superintendent, Dhoolpet, Hyderabad and 2 others. .. Respondents

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ORDER :

The petitioners herein made an application for grant of licence in Form-2B for establishing a bar and restaurant at Door No.4-3-394, 403, 404, 409 & 410, Bank Street, Hyderabad under the provisions of the A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005. Having considered the same, the 3rd respondent – Commissioner of Prohibition & Excise granted prior clearance vide proceedings dated 24-6-2006 which is valid for 45 days. Pursuant thereto, the petitioners made an application on 29-6-2006 for grant of licence. However, the same was not considered in view of the order passed by this Court in W.P.M.P.No.16528 of 2006 in W.P.No.13301 of 2006, dated 30-6-2006, restraining the officials from granting any bar licence within 100 mts. from the places of Educational Institutions, places of Public Worship and etc. The petitioners herein got impleaded to the said writ petition as party-respondents and field a petition to vacate the said order. The Division Bench by order dated 23-8-2006 declined to vacate the interim order, observing as under :

> *"With the above observations, the application is dismissed. However, it is made clear that this order shall not preclude the added respondents and the applicants from making an application to the competent authority for grant of licence for a bar located beyond a distance of 100 metres from the places of worship or educational institutions or hospitals."*

Aggrieved by the same, the petitioners carried the matter to the Supreme Court. The petitioners state that in their appeal being Appeal (Civil) No.16389 of 2006, notice was ordered by the Apex Court on 16-10-2006 and the matter is yet to be heard. While so, the impugned order dated 27-9-2006 has been passed by the Deputy Commissioner of Prohibition & Excise rejecting the request of the petitioners for grant of Form-2B licence on the ground that the validity of prior clearance issued by the Commissioner of Prohibition & Excise stood expired.

The said order is challenged in this writ petition contending inter alia that since the matter is sub judice before the Supreme Court, the respondents are not justified in rejecting the application of the petitioners for grant of licence. It is pleaded that the question whether the prohibited distance under Rule 6 shall be 50 mts. as provided under Rule 6 of the A.P. Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the Rules') or it is necessary to maintain 100 mts. as directed by the Division Bench of this Court is required to be considered by the Supreme Court in Appeal (Civil) No.16389 of 2006 and therefore pending the appeal the respondents ought not have rejected the application of the petitioners for grant of licence. It is further contended that the ground on which the application was rejected is untenable since the statutory rules did not provide for any time-limit for the validity of prior clearance granted by the Commissioner and in the absence of any statutory requirement, the 2nd respondent has no authority to hold that the prior clearance stood expired after 45 days from the date of issue.

I have heard the learned Counsel for the petitioners and the learned Government Pleader for Prohibition & Excise appearing for the respondents.

It is to be noted that Rule 6 (1) (ii) of the Rules initially prescribed was as under :

"A licence in Form-2B shall not be granted - -
(i) … …. … ….. ……
(ii) within 100 mts. from Educational Institutions recognised by the Government, Places for Public Worship such as Temples registered by Endowments Department, Mosques registered with the Wakf Board, Churches and Hospitals.
Provided that in the limits of Municipal Corporations and within the belt area 5 kms from the periphery of the Municipal Corporation the distance restrictions mentioned above shall be 50 mts.
…. …. … … … …."

Pursuant to the directions of the Division Bench of this Court, an amendment was brought to the Rules under G.O.Ms.No. 1509, Revenue (Excise.II), dated 13-10-2006, omitting the proviso to Rule 6 (1) (ii). Consequently the distance of 100 mts. is made applicable even to the bars situated in the Municipal Corporations as well as within the belt area of 5 kms from the periphery of Municipal Corporations. In the light of the said statutory rule, the validity of which is not under challenge, the contention of the petitioner cannot be accepted.

So far as the validity of prior clearance is concerned, it is to be noted that Form-2A which prescribed the form for prior clearance under Rule 5 of the Rules itself specifies that the prior clearance is valid only for 45 days from the date of issue. From-2A which forms part of statutory rules is mandatory and therefore the 2nd respondent cannot be found fault with in passing the impugned order on the ground that the validity of prior clearance stood expired.

For the aforesaid reasons, I do not find substance in any of the contentions raised by the petitioners and accordingly the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 4-12-2006
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